Bartell Vs. United States

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SooperKanoon Citation : sooperkanoon.com/91628

Court : US Supreme Court

Decided On : Feb-24-1913

Appeal No. : 227 U.S. 427

Appellant : Bartell

Respondent : United States

Judgement :

Bartell v. United States - 227 U.S. 427 (1913)
U.S. Supreme Court Bartell v. United States, 227 U.S. 427 (1913)

Bartell v. United States

No. 691

Argued January 14, 1913

Decided February 24, 1913

227 U.S. 427

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH DAKOTA

SYLLABUS

An indictment, to be good under the Constitution and laws of the United States, must advise the accused of the nature and cause of the accusation sufficiently to enable him to meet the accusation and prepare for trial and so that, after judgment, he may he able to plead the record and judgment in bar of further prosecution for the same offense.

While ordinarily documents essential to the charge of crime must be sufficiently described to make known the contents thereof, matter too obscene or indecent to be spread on the record may be referred to in a manner sufficient to identify it and advise the accused of the document intended without setting forth its contents, and so *held* as to an indictment under 3893 Rev.Stat. for sending obscene matter through the mails.

The accused may demand a bill of particulars if the reference in the indictment to a letter too obscene to be published does not sufficiently identify it, and, in the absence of such demand, a detailed reference is sufficient.

The accused is entitled to resort to parol evidence on a prosecution for sending obscene matter through the mail to show that the letter on which the indictment is based had been the subject matter of a former prosecution, and therefore if the letter is too obscene to be spread on the record, it is sufficient if a reference is made thereto in such detail that it may be identified.

The facts, which involve the construction of 3893, Rev.Stat., and the validity of an indictment and conviction thereunder for depositing obscene matter in a post office of the United States, are stated in the opinion.

Page 227 U. S. 430

MR. JUSTICE DAY delivered the opinion of the Court.

The plaintiff in error was indicted under 3893 of the Revised Statutes, which declares certain matter unmailable, for depositing a letter alleged to be obscene, in

a post office of the United States. Upon trial, he was convicted, and was sentenced to a term in the penitentiary. The case is brought here to review alleged errors in failing to sustain objections made to the indictment in the court below.

The indictment charged that Bartell did on the 24th of November, 1911 at Sioux Falls, in the County of Minnehaha, State of South Dakota, unlawfully, willfully, knowingly, and feloniously deposit in the United States post office at Sioux Falls aforesaid, for mailing and delivery by the post office establishment of the United States, certain nonmailable matter, to-wit:

"A letter enclosed in an envelop, which said letter was then and there filthy, obscene, lewd, lascivious, and of an indecent character, and is too filthy, obscene, lewd, offensive, and of such indecent character as to be unfit to be set forth in this indictment and to be spread at length upon the records of this honorable court. Therefore the grand jurors, aforesaid, do not set forth the same in this indictment, and which said envelop containing said letter was then and there directed to and addressed as follows: Miss Zella Delleree, Stevens Point, Wisconsin, he, the said Lester P.

Page 227 U. S. 431

Bartell, then and there well knowing the contents of said letter and the character thereof, and well knowing the same to be filthy, obscene, lewd, and lascivious, and of an indecent character."

The plaintiff in error appeared and demurred to this indictment for the reasons following:

"I. That the facts stated in said indictment are not sufficient to and do not constitute a crime."

"II. That no facts are stated sufficient to notify this defendant of the nature and cause of the accusation for which he is now placed on trial, as required by Article VI of the Amendments to the Constitution of the United States."

The court overruled the demurrer. The same objection, in substance, was taken by motion in arrest of judgment after conviction, and the question presented here is the alleged insufficiency of the indictment.

It is elementary that an indictment, in order to be good under the federal Constitution and laws, shall advise the accused of the nature and cause of the accusation against him, in order that he may meet the accusation and prepare for his trial, and that, after judgment, he may be able to plead the record and judgment in bar of further prosecution for the same offense.

While it is true that ordinarily a document or writing essential to the charge of crime must be sufficiently described to make known its contents or the substance thereof, there is a well recognized exception in the pleading of printed or written matter which is alleged to be too obscene or indecent to be spread upon the records of the court. It is well settled that such matter may be identified by a reference sufficient to advise the accused of the letter or document intended without setting forth its contents. *United States v. Bennett,* 16 Blatchf. 338; *Rosen v. United States,* 161 U. S. 29 .

Page 227 U. S. 432

The cases were fully reviewed by Mr. Justice Harlan, speaking for the court, in the *Rosen* case, and after stating the right of the accused to be advised of the nature and cause of the accusation against him with such reasonable certainty that he can make his defense and protect himself against further prosecution, the doctrine was thus summarized (p. 161 U. S. 40):

"This right is not infringed by the omission from the indictment of indecent and obscene matter, alleged as not proper to be spread upon the records of the court, provided the crime charged, however general the language used, is yet so described as reasonably to inform the accused of the nature of the charge sought to be established against him, and . . . in such case, the accused may apply to the court before the trial is entered upon for a bill of particulars, showing what parts of the paper would be relied on by the prosecution as being obscene, lewd, and

lascivious, which motion will be granted or refused, as the court, in the exercise of a sound legal discretion, may find necessary to the ends of justice."

We find, upon applying this doctrine to the instant case, that it was specifically charged that the letter was mailed by the accused in violation of the statute, upon a day named at the post office, in a town and county named and within the district; that its contents were well known to the accused, and were so filthy, obscene, lewd, and offensive, and of such indecent character, as to be unfit to be spread upon the record of the court, and that the letter was enclosed in an envelop which was addressed to the person and place specified in the indictment. There was no attempt on the part of the accused to require a bill of particulars, giving a more specific description of the letter, or any further identification of it, if that was necessary to his defense. Under the federal practice, he had a right to apply for such bill of particulars, and it was within the judicial discretion of the court to grant such order, if

Page 227 U. S. 433

necessary for the protection of the rights of the accused, and to order that the contents of the letter be more fully brought to the attention of the court, with a view to ascertaining whether a verdict upon such matter as obscene would be set aside by the court. *United States v. Bennett* and *Rosen v. United States, supra.* In *Durland v. United States,* 161 U. S. 306 , 161 U. S. 315 , it was held that a general description of a letter, identified by the time and place of mailing, when it was mailed in pursuance of a scheme to defraud, was sufficient, in the absence of a demand for a bill of particulars.

As to the objection that the charge was so indefinite that the accused could not plead the record and conviction in bar of another prosecution, it is sufficient to say that, in such cases, it is the right of the accused to resort to parol testimony to show the subject matter of the former conviction, and such practice is not infrequently necessary. *United States v. Claflin,* 13 Blatchf. 178; *Dunbar v. United States,* 156 U. S. 185 ; *Tubbs v. United States,* 105 F. 59. In the *Dunbar* case, it was stated that other proof beside the record might be required to identify

the subject matter of two indictments, and the rule was laid down as follows (p. 156 U. S. 191):

"The rule is that, if the description brings the property in respect to which the offense is charged clearly within the scope of the statute creating the offense, and at the same time so identifies it as to enable the defendant to fully prepare his defense, it is sufficient."

The present indictment specifically charged that the accused had knowingly violated the laws of the United States by depositing on a day named, in the post office specifically named, a letter of such indecent character as to render it unfit to be set forth in detail, enclosed in an envelop bearing a definite address. In the absence of a demand for a bill of particulars we think this description sufficiently advised the accused of the nature and cause of

Page 227 U. S. 434

the accusation against him. This fact is made more evident when it is found that this record shows no surprise to the accused in the production of the letter at the trial, and no exception to its introduction in evidence, and there is no indication that the contents of the letter, when it was produced, did not warrant the description of it given in the indictment.

Judgment affirmed.